

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

OGALLALA COMMUNITY HOSPITAL)	
AND HEALTH FOUNDATION,)	
)	
Plaintiff,)	7:04CV5012
)	
v.)	
)	
VITZTUM COMMERCIAL FLOORING,)	ORDER
INC., a Kansas corporation,)	
AMCO INSURANCE COMPANY, an)	
Iowa corporation, surety;)	
HORTY ELVING CONSTRUCTION)	
SERVICES, INC., a Minnesota)	
corporation, d/b/a)	
CONSTRUCTION COORDINATORS,)	
INC., and HORTY ELVING &)	
ASSOCIATES, INC., a Minnesota)	
corporation,)	
)	
Defendants.)	
_____)	

This matter is before the Court on defendant and third party plaintiff's motion to compel discovery from third party defendant Dependable Chemical Co., Inc. ("Dependable") (Filing No. 130) and motion for an order to show cause with regard to this Court's January 26, 2006 order and supplemental motion to compel Dependable regarding interrogatory Number 11(d) and requests for production numbers 1, 9 and 10 (Filing No. 151) and Dependable's motion to withdraw request for admission number 5 (Filing No. 161). The Court has reviewed the briefs and evidentiary submissions of the parties and finds that defendant and Third party plaintiff's ("Vitzum") motion to show cause (Filing No. 151) is granted in part and denied in part, Vitzum's motion to

compel (Filing No. 130) is denied as moot, and Dependable's motion to withdraw request for admissions response to Number 5 (Filing No. 161) is granted.

Accordingly,

IT IS ORDERED that:

1. Third party defendant Dependable shall completely respond to Interrogatories number 4, 5, 7, 11(d), 16 and 22 and request for production numbers 1, 9 and 10. Defendant and third party plaintiff Vitzum will provide Dependable with a copy of the Bate stamped documents, at Dependable's expense, so that Dependable can then identify by Bate number which documents are responsive to which interrogatory and request for production;

2. If Dependable has already completely responded to any or all of these interrogatories and requests for production, Dependable shall file an affirmation signed by Mr. Homer Taft at Dependable stating that:

He has: (1) read the foregoing requests, and has diligently searched (in the places that documents should be kept within Dependable) for documents responsive to the Requests for Production, and that all documents found in those searches have been disclosed and produced (with the exception of privileged documents contained on the privilege log); and (2) that the Answers to Interrogatories and Responses to Request for Production of Documents are

believed to be true and that all responsive information has been provided to Vitzum;

3. Dependable's motion to withdraw its admission to request for admissions number 5 (Filing No. 161) is granted. Dependable will have until June 20, 2006 to reply to this request for admission and to supplement its answer to interrogatory number 25;

4. Dependable shall submit all of the documents listed on its privilege log to the Court for which Dependable still is asserting privilege for the Court's review. Dependable will have until June 20, 2006 to provide these documents to the Court for in camera review.

DATED this 7th day of June, 2006.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court